

1 STUART F. DELERY
2 Assistant Attorney General

SEALED BY ORDER
OF THE COURT

FILED

DEC 11 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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DEC 11 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

27 UNITED STATES DISTRICT COURT
28 NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

29 UNITED STATES OF AMERICA ex rel.) CASE NO. C 12-2817 DMR
30 ROCHELLE SPENCE,)
31 Plaintiffs,) STIPULATION AND REQUEST FOR
32) ENLARGEMENT OF TIME TO ELECT
33) OR DECLINE TO INTERVENE;
34) ~~PROPOSED~~ ORDER
35 v.)
36 SUTTER HEALTH and ALTA BATES) FILED UNDER SEAL
37 SUMMIT MEDICAL CENTER, et al.,)
38 Defendant.)

The United States of America and Rochelle Spence, as Relator, through their undersigned counsel of record, hereby stipulate and request that the Court enlarge until June 18, 2014, the period during which the United States may elect to intervene in the above-captioned False Claims Act (“FCA”), 31 U.S.C. §§ 3729-2733 *qui tam* action or the notify the Court that it declines to do so, and during which the complaint and other filings shall remain under seal.

1. This request is being filed *ex parte* pursuant to Civ. L.R. 7-10 and the Federal FCA. It is not being served on Defendant, as the case is under seal and Defendant has not yet been served in this case. This filing is being served on Relator.

2. This action was filed on June 1, 2012, under the *qui tam* provisions of the Federal FCA. Among other things, these provisions authorize private parties (known as relators) to file lawsuits alleging FCA violations on behalf of the United States. 41 U.S.C. § 3730(b).

3. In this action, Relator alleges, *inter alia*, that Defendants devised a fraudulent scheme to change the diagnosis codes on claims that could not be paid by Medicare to diagnosis codes that could be paid, and added additional diagnosis codes to obtain greater reimbursement than warranted.

4. Under the FCA, the *qui tam* relator is required to file the complaint under seal and serve it on the United States, but not on the defendant, so that the government may investigate the allegations in the complaint and make an informed decision whether to intervene in the action before the defendant is made aware of the case. The FCA provides that the complaint “shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders.” 31 U.S.C. § 3730(b)(2). The *qui tam* provisions of the Federal FCA expressly contemplate that motions for extensions of the 60-day period will be permitted upon a showing of “good cause.” 31 U.S.C. § 3730(b)(2) and (3).

5. In the present case, Relator completed service of her written disclosure of material evidence and the Complaint on the United States on June 17, 2012. The United States previously sought, and obtained, three extensions of the seal period. The seal currently expires on December 18, 2013.

6. The United States has been diligently investigating this case. Since the Complaint was filed, the United States interviewed the relator, and obtained a partial lift of the seal so the Complaint could be shared with Defendant. Defendant investigated the allegations, and made a presentation to the Government, which is now in the process of concluding its investigation. The results of the Government's review warrant a deeper inquiry. Accordingly, an additional period is required to reasonably investigate the allegations in the complaint and reach a decision on intervention.

7. Accordingly, the Government seeks a six-month extension of the seal and intervention deadlines in the present case until June 18, 2014. During the extension period, if granted, the Government will continue to diligently investigate the case.

8. Due to Civil L.R. 79-5, which provides that sealed documents are automatically unsealed ten years from the date the case is closed, the United States is reluctant to provide more specific information about its investigation in writing. If the Court so requests, the undersigned government counsel will provide oral information about the government's investigation in camera, pursuant to 31 U.S.C. § 3730(b)(3).

9. Pursuant to 31 U.S.C. § 3730(b)(3), we additionally request that the Complaint and all other papers filed or lodged in this case shall remain sealed until June 18, 2014.

DATED: December 11, 2013

STUART F. DELERY
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2 DATED: December 10, 2013
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INGRID EVANS
The Evans Law Firm
MARK HERSH
Hersh & Hersh
KELLY ARMSTRONG
The Armstrong Law Firm

Attorneys for Relator

8 [PROPOSED] ORDER
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10 IT IS HEREBY ORDERED THAT:
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12 1. The United States shall have up to and including June 18, 2014, to inform the Court
13 of its decision whether to intervene in this matter.
14 2. All pleadings and other documents filed in this action shall remain under seal until
15 further order of the Court.
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17 IT IS SO ORDERED.
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Dated: 12/11/13



HON. DONNA M. RYU
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA ex rel. ROCHELLE SPENCE,

Case Number: CR-12-2817-DMR

Plaintiff,

**CERTIFICATE OF SERVICE
(UNDER SEAL)**

v.

SUTTER HEALTH, ET AL,

Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 12, 2013, I SERVED true and correct copies of the Stipulation and Order Re: Request for Enlargement of Time to Elect or Decline to Intervene, by placing said copies in a postage paid envelopes addressed to the persons hereinafter listed, by depositing said envelopes in the U.S. Mail, or by placing said copies into an inter-office delivery receptacle located in the Clerk's office.

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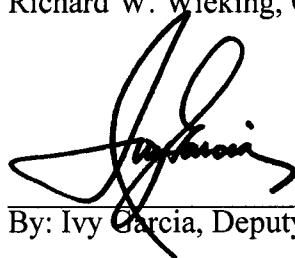
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Dated: December 12, 2013

Richard W. Wiking, Clerk



A handwritten signature in black ink, appearing to read "Richard W. Wiking". The signature is fluid and cursive, with a large, stylized 'R' at the beginning.

By: Ivy Garcia, Deputy Clerk